

## § 502.12

interested person outside the Commission shall make or knowingly cause to be made to any Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any such proceeding, an ex parte communication relevant to the merits of the proceeding;

(b) No Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any agency proceeding, shall make or knowingly cause to be made to any interested persons outside the Commission or to any party to the proceeding or its agent or to any direct participant in a proceeding, an ex parte communication relevant to the merits of the proceeding. This prohibition shall not be construed to prevent any action authorized by paragraphs (e), (f) and (g) of this section;

(c) “Ex parte communication” means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports or communications regarding purely procedural matters or matters which the Commission or member thereof, administrative law judge, or Commission employee is authorized by law or these rules to dispose of on an ex parte basis;

(d) Any Commission member, administrative law judge, or Commission employee who is or may reasonably be expected to be involved in the decisional process of any proceeding who receives, or who makes or knowingly causes to be made, an ex parte communication shall promptly transmit to the Secretary of the Commission:

- (1) All such written communications;
- (2) Memoranda stating the substance of all such oral communications; and
- (3) All written responses and memoranda stating the substance of all oral responses to the materials described in paragraphs (d)(1) and (d)(2) of this section;

(e) The Secretary shall place the materials described in paragraph (d) of this section in the correspondence part of the public docket of the proceeding and may take such other action as may

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be appropriate under the circumstances;

(f) Upon receipt of an ex parte communication knowingly made or knowingly caused to be made by a party to a proceeding, the Commission or the presiding officer may, to the extent consistent with the interests of justice and the policy of the statutes administered by the Commission, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the making of such communication;

(g) An ex parte communication shall not constitute a part of the record for decision. The Commission or the presiding officer may, to the extent consistent with the interests of justice and the policy of the statutes administered by the Commission, consider a violation of paragraph (b) of this section sufficient grounds for a decision adverse to a party who has knowingly caused such violation to occur and may take such other action as may be appropriate under the circumstances. [Rule 11.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 64 FR 7807, Feb. 17, 1999; 64 FR 23551, May 3, 1999; 64 FR 33762, June 24, 1999]

### § 502.12 Applicability of Federal Rules of Civil Procedure.

In proceedings under this part, for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice. [Rule 12.]

[58 FR 27210, May 7, 1993, as amended at 64 FR 7807, Feb. 17, 1999]

## Subpart B—Appearance and Practice Before the Commission

### § 502.21 Appearance.

(a) *Parties.* A party may appear in person or by an officer, partner, or regular employee of the party, or by or with counsel or other duly qualified representative, in any proceeding under the rules in this part. Any party

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or his or her representative may testify, produce and examine witnesses, and be heard upon brief and at oral argument if oral argument is granted.

(b) *Persons not parties.* One who appears in person before the Commission or a representative thereof, either by compulsion from, or request or permission of the Commission, shall be accorded the right to be accompanied, represented, and advised by counsel.

(c) *Special appearance.* An appearance may be either general, that is, without reservation, or it may be special, that is, confined to a particular issue or question. If a person desires to appear specially, he or she must expressly so state when entering the appearance and, at that time, shall also state the questions or issues to which he or she is confining the appearance; otherwise his or her appearance will be considered as general. [Rule 21.]

[49 FR 44369, Nov. 6, 1984, as amended at 64 FR 7807, Feb. 17, 1999]

### § 502.22 Authority for representation.

Any individual acting in a representative capacity in any proceeding before the Commission may be required to show his or her authority to act in such capacity. [Rule 22.]

### § 502.23 Notice of appearance; substitution and withdrawal of representative.

(a) Upon filing of a complaint instituting proceedings or filing of an answer to an order or complaint, the party filing shall notify the Commission of the name(s) and address(es) of the person or persons who will represent them in the pending proceeding. Each person who appears at a hearing shall deliver a written notice of appearance to the reporter, stating for whom the appearance is made. Such notice shall indicate whether the representative wishes to be notified of decisions by telephone, facsimile transmission, or electronic mail. All appearances shall be noted in the record. Petitions for leave to intervene shall indicate the name(s) and address(es) of the person or persons who will represent the intervenor in the pending proceeding if the petition is granted.

(b) A Notice of Appearance should follow the form set forth in Exhibit No. 1 to this subpart.

(c) If an attorney or other representative of record is superseded, there shall be filed a stipulation of substitution signed both by the attorney(s) or representative(s) and by the party, or a written notice from the party to the Commission.

(d) If an attorney wishes to withdraw from representing a party, such attorney shall file an appropriate motion seeking permission to withdraw and provide appropriate reasons for making the motion. Such motion will be decided in consideration of the factors and standards set forth in Rule 1.16 of the American Bar Association's Model Rules of Professional Conduct and by the courts.

[64 FR 7807, Feb. 17, 1999]

### § 502.24 Practice before the Commission defined.

(a) Practice before the Commission shall be deemed to comprehend all matters connected with the presentation of any matter to the Commission, including the preparation and filing of necessary documents, and correspondence with and communications to the Commission, on one's own behalf or representing another. (See § 502.32).

(b) The term "Commission" as used in this subpart includes any bureau, division, office, branch, section, or unit of the Federal Maritime Commission and any officer or employee of such bureau, division, office, branch, section, or unit. [Rule 24.]

[49 FR 44369, Nov. 6, 1984, as amended at 64 FR 7807, Feb. 17, 1999]

### § 502.25 Presiding officer defined.

"Presiding officer" means and shall include (a) any one or more of the members of the Commission (not including the Commission when sitting as such), (b) one or more administrative law judges or (c) one or more officers authorized by the Commission to conduct nonadjudicatory proceedings when duly designated to preside at such proceedings. (See subpart J of this part.) [Rule 25.]